

Christy D. Joseph (#136785)
cjoseph@swlaw.com
Nathan W. Hicks (#236269)
nhicks@swlaw.com
SNELL & WILMER L.L.P.
600 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-7689
Telephone: (714) 427-7000
Facsimile: (714) 427-7799

Attorneys for Defendants

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF
CALIFORNIA

CHAD MCKINNEY, an individual,
Plaintiff,

v.

APOLLO GROUP, INC.,
UNIVERSITY OF PHOENIX, a
Corporation, MECHELLE
BONILLA, an Enrollment Manager
at UNIVERSITY OF PHOENIX,
KYAN FLYNN, Director of
Enrollment at UNIVERSITY OF
PHOENIX, APRIL ALCORN, an
Employees Relations Consultant at
UNIVERSITY OF PHOENIX,
CARLYN LINDSTEN, Associate
Director of Enrollment at
UNIVERSITY OF PHOENIX

Defendants

CASE NO. 07-CV-2373 WQH CAB

**NOTICE OF MOTION AND
MOTION TO SET ASIDE ENTRY
OF DEFAULT AGAINST KYAN
FLYNN, MECHELLE BONILLA
AND CARLYN LINDSTEN**

[FRCP 55(c)]

**NO ORAL ARGUMENT, UNLESS
REQUESTED BY THE COURT**

Date: April 21, 2008

Time: 11:00 a.m.

Courtroom: 4

Judge: Hon. William Q. Hayes

DATE OF FILING: December 19, 2007

TO PLAINTIFF AND HIS ATTORNEY(S) OF RECORD:

PLEASE TAKE NOTICE that on April 21, 2008 at 11:00 a.m., or as soon thereafter as counsel may be heard by the above entitled Court, located at 940 Front Street, San Diego, California 92101, Courtroom 4, defendants Kyan Flynn, Mechelle Bonilla and Carlyn Lindsten (the "Individual Defendants") will and hereby do move the Court pursuant to Rule 55(c) of the Federal Rules of Civil Procedure ("FRCP") to set aside the Court Clerk's entry of default entered on March 13, 2008 ("Default").

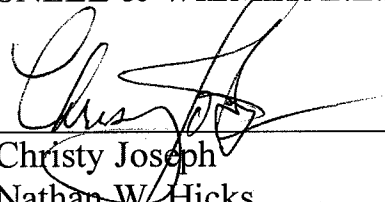
This action is brought on the following grounds: (1) The Default is void since the Individual Defendants never received notice of the action before the answer was due; (2) The Court lacks jurisdiction over the Individual Defendants since the Individual Defendants were never properly served and therefore could not respond before the answer was due; and/or (3) the Individual Defendants reasonably believed, but were mistaken, that they had not been given actual notice and were properly served so that they should be relieved from the Default.

This motion is based on this notice of motion and motion, the memorandum of points and authorities, the declarations of Nathan W. Hicks, Kyan Flynn, Mechelle Bonilla and Carlyn Lindsten filed herewith, and supporting exhibits thereto, the Court's files in this matter, all supporting documents, evidence and oral argument before this Court at the time of the hearing, and any other matter properly before the Court.

This motion is made following a reasonable and good-faith attempt to conference with plaintiff.

Date: March 20, 2008

SNELL & WILMER L.L.P.

By: 
Christy Joseph
Nathan W. Hicks
Attorneys for Apollo Group, Inc.

McKinney v. Apollo Group, Inc., et al.
USDC, Southern – Case No. 07-CV-2373

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On March 20, 2008, I served, in the manner indicated below, the foregoing document described as

**NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT
AGAINST KYAN FLYNN, MECHELLE BONILLA AND CARLYN
LINDSTEN**

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

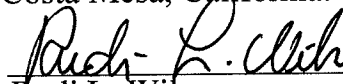
I am employed in the office of a member of the bar of this court at whose direction the service was made.

Please See Attached Service List

- ☐ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)).
- ☐ BY FACSIMILE: (C.C.P. § 1013(e)(f) and by e-mail
- ☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).
- ☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addressees. (C.C.P. § 1011(a)(b)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 20, 2008, at Costa Mesa, California.


Rudi L. Wilson

McKinney v. Apollo Group, Inc., et al.
USDC, Southern – Case No. 07-CV-2373

<p>Chad McKinney Pro Se 6266 Madeline Street, Apt. #61 San Diego, CA 92115 (619) 634-3566</p>	<p>Plaintiff, Pro Se</p>
<p>United States District Court Attention: Hon. Judge William Q. Hayes Courtroom 4 880 Front Street, Room 4290 San Diego, CA 92101-8900 (619) 557-5600</p>	<p>Courtesy Copy</p>

Snell & Wilmer
LLP
LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
(714) 427-7000